

111TH CONGRESS  
1ST SESSION

# S. 1428

To amend the Toxic Substances Control Act to phase out the use of mercury in the manufacture of chlorine and caustic soda, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 9, 2009

Mr. WHITEHOUSE (for himself, Mr. CARDIN, Mrs. FEINSTEIN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Toxic Substances Control Act to phase out the use of mercury in the manufacture of chlorine and caustic soda, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mercury Pollution Re-  
5 duction Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) mercury and mercury compounds are highly  
9 toxic to humans, ecosystems, and wildlife;

1           (2)(A) as many as 10 percent of women in the  
2           United States of childbearing age have mercury in  
3           their bloodstreams at a level that could pose risks to  
4           their unborn babies; and

5           (B) hundreds of thousands of children born an-  
6           nually in the United States are at risk of neuro-  
7           logical problems relating to mercury exposure in  
8           utero;

9           (3) the most significant source of mercury expo-  
10          sure to people in the United States is ingestion of  
11          mercury-contaminated fish;

12          (4) the long-term solution to mercury pollution  
13          is to minimize global mercury use and releases of  
14          mercury to eventually achieve reduced contamination  
15          levels in the environment, rather than reducing fish  
16          consumption, because uncontaminated fish represent  
17          a critical and healthy source of nutrition for people  
18          worldwide;

19          (5) mercury pollution is a transboundary pollut-  
20          ant that—

21                  (A) is deposited locally, regionally, and  
22                  globally; and

23                  (B) affects bodies of water—

24                          (i) near industrial areas, such as the  
25                          Great Lakes; and

1 (ii) in remote areas, such as the Arc-  
2 tic Circle;

3 (6) of the approximately 30 facilities in the  
4 United States that produce chlorine—

5 (A) only 5 use the obsolete “mercury cell”  
6 chlor-alkali process; and

7 (B) 4 have not yet committed to phasing  
8 out mercury use;

9 (7)(A) less than 5 percent of the total quantity  
10 of chlorine and caustic soda produced in the United  
11 States comes from the chlor-alkali plants described  
12 in paragraph (6) that use the mercury cell chlor-al-  
13 kali process;

14 (B) cost-effective alternatives are available and  
15 in use in the remaining 95 percent of chlorine and  
16 caustic soda production; and

17 (C) other countries, including Japan, have al-  
18 ready banned the mercury cell chlor-alkali process;

19 (8) the chlor-alkali industry acknowledges  
20 that—

21 (A) mercury can contaminate products  
22 manufactured at mercury cell facilities; and

23 (B) the use of some of those products re-  
24 sults in the direct and indirect release of mer-  
25 cury;

1           (9) despite those quantities of mercury known  
2           to have been used or to be in use, neither the chlor-  
3           alkali industry nor the Environmental Protection  
4           Agency is able—

5                   (A) to adequately account for the disposi-  
6                   tion of the mercury used at those facilities; or

7                   (B) to accurately estimate current mercury  
8                   emissions; and

9           (10) it is critically important that the United  
10          States work aggressively toward the minimization of  
11          supply, demand, and releases of mercury, both do-  
12          mestically and internationally.

13 **SEC. 3. STATEMENT OF POLICY.**

14          It is the policy of the United States that the United  
15          States should develop policies and programs that will—

16                   (1) reduce mercury use and emissions within  
17                   the United States;

18                   (2) reduce mercury releases from the reservoir  
19                   of mercury currently in use or circulation within the  
20                   United States; and

21                   (3) reduce exposures to mercury, particularly  
22                   exposures of women of childbearing age and young  
23                   children.

1 **SEC. 4. USE OF MERCURY IN CHLORINE AND CAUSTIC**  
 2 **SODA MANUFACTURING.**

3 (a) IN GENERAL.—Title I of the Toxic Substances  
 4 Control Act (15 U.S.C. 2601 et seq.) is amended by in-  
 5 serting after section 6 the following:

6 **“SEC. 6A. USE OF MERCURY IN CHLORINE AND CAUSTIC**  
 7 **SODA MANUFACTURING.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) CHLOR-ALKALI FACILITY.—The term  
 10 ‘chlor-alkali facility’ means a facility used for the  
 11 manufacture of chlorine or caustic soda using a mer-  
 12 cury cell process.

13 “(2) HAZARDOUS WASTE; SOLID WASTE.—The  
 14 terms ‘hazardous waste’ and ‘solid waste’ have the  
 15 meanings given those terms in section 1004 of the  
 16 Solid Waste Disposal Act (42 U.S.C. 6903).

17 “(b) PROHIBITION; USE PRIOR TO PROHIBITION.—

18 “(1) PROHIBITION.—Effective on the date that  
 19 is 2 years after the date of enactment of this sec-  
 20 tion, the manufacture of chlorine or caustic soda  
 21 using a mercury cell is prohibited in the United  
 22 States.

23 “(2) EXPORT BAN.—Effective on the date of  
 24 enactment of this section, the export of any mercury,  
 25 mercury cell, mercury compound, or mixture con-

1       taining mercury by the owner or operator of a chlor-  
2       alkali facility is prohibited.

3       “(c) REPORTING.—

4               “(1) IN GENERAL.—Not later than 2 years  
5       after the date of enactment of this section, the  
6       owner or operator of each chlor-alkali facility shall  
7       submit to the Administrator and the State in which  
8       the chlor-alkali facility is located a report that iden-  
9       tifies—

10               “(A) each type and quantity of mercury-  
11       containing hazardous waste and nonhazardous  
12       solid waste generated by the chlor-alkali facility  
13       during the preceding calendar year;

14               “(B) the mercury content of the wastes;

15               “(C) the manner in which each waste was  
16       managed, including the location of each offsite  
17       location to which the waste was transported for  
18       subsequent handling or management;

19               “(D) the volume of mercury released, in-  
20       tentionally or unintentionally, into the air or  
21       water by the chlor-alkali facility, including mer-  
22       cury released from emissions or vaporization;

23               “(E) the volume of mercury estimated to  
24       have accumulated in pipes and plant equipment

1 of the chlor-alkali facility, including a descrip-  
2 tion of—

3 “(i) the applicable volume for each  
4 type of equipment; and

5 “(ii) methods of accumulation; and

6 “(F) the quantity and forms of mercury  
7 found in all products produced for sale by the  
8 chlor-alkali facility.

9 “(2) AVOIDANCE OF DUPLICATION.—To avoid  
10 duplication, the Administrator may permit the owner  
11 or operator of a facility described in paragraph (1)  
12 to combine and submit the report required under  
13 this subsection with any report required to be sub-  
14 mitted by the owner or operator under subtitle C of  
15 the Solid Waste Disposal Act (42 U.S.C. 6921 et  
16 seq.).

17 “(d) INVENTORY.—

18 “(1) IN GENERAL.—For each chlor-alkali facil-  
19 ity that ceases operations on or after January 1,  
20 2009, not later than 1 year after the date of ces-  
21 sation of operations, the Administrator, in consulta-  
22 tion with the State in which the facility is located,  
23 shall conduct a comprehensive mercury inventory  
24 covering the life and closure of the chlor-alkali facil-  
25 ity, taking into account—

1           “(A) the total quantity of mercury pur-  
2           chased to start and operate the chlor-alkali fa-  
3           cility;

4           “(B) the total quantity of mercury remain-  
5           ing in mercury cells and other equipment at the  
6           time of closure of the chlor-alkali facility;

7           “(C) the estimated quantity of mercury in  
8           hazardous waste, nonhazardous solid waste, and  
9           products generated at the chlor-alkali facility  
10          during the operational life of the chlor-alkali fa-  
11          cility; and

12          “(D) the estimated aggregate mercury re-  
13          leases from the chlor-alkali facility into air and  
14          other environmental media.

15          “(2) RECORDS AND INFORMATION.—In car-  
16          rying out paragraph (1), the Administrator shall ob-  
17          tain mercury purchase records and such other infor-  
18          mation from each chlor-alkali facility as the Admin-  
19          istrator determines to be necessary to determine, as  
20          accurately as practicable from available information,  
21          the magnitude and nature of mercury releases from  
22          the chlor-alkali facility into air and other environ-  
23          mental media.

24          “(3) AUTHORITIES.—This Administrator shall  
25          use the authorities of section 11 and any other ap-



1       appropriate authorities of this Act to carry out this  
2       subsection.”.

3       (b) CONFORMING AMENDMENTS.—

4               (1) TABLE OF CONTENTS.—The table of con-  
5       tents of the Toxic Substances Control Act (15  
6       U.S.C. 2601 note) is amended by inserting after the  
7       item relating to section 6 the following:

“Sec. 6A. Use of mercury in chlorine and caustic soda manufacturing.”.

8               (2) ENFORCEMENT.—Section 15 of the Toxic  
9       Substances Control Act (15 U.S.C. 2614) is amend-  
10      ed by striking “or 6” each place it appears and in-  
11      serting “, 6, or 6A”.

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